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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GARY JAMES ROLLER, )  
 )  
Defendant. )  
 )  
 )  
 )  
 )  
 )

No. CR 08-00361(A) RMW

**STIPULATION AND [ ]  
ORDER CONTINUING MOTIONS  
HEARING FROM JULY 13, 2009 TO  
AUGUST 10, 2009 AND EXCLUDING  
TIME FROM JULY 13, 2009 TO  
AUGUST 17, 2009, FROM  
CALCULATIONS UNDER THE  
SPEEDY TRIAL ACT (18 U.S.C. § 3161)**

The parties hereby request that the Court enter this order continuing the motions hearing from July 13, 2009 to August 10, 2009, and excluding time from July 13, 2009 to August 17, 2009. The parties, including the defendant, stipulate as follows:

1. The defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, for the period from July 13, 2009 to August 17, 2009 based upon the need for the defense counsel to investigate further the facts of the present case and determine what, if any, additional motions are appropriate. The government has produced discovery in this case and the defense counsel and defendant require additional time to review

1 and analyze this discovery.

2 In addition, on March 2, 2009, defendant filed a motion to suppress, a motion for a bill of  
 3 particulars and a motion to strike one of the counts as multiplicitous. On May 4, 2009, defendant  
 4 filed a supplemental motion to suppress. Argument for all of these motions is currently  
 5 scheduled to be heard on May 18, 2009. On May 11, 2009, the government filed supplemental  
 6 declarations in support of its opposition to defendant's motion to suppress. Defense counsel has  
 7 stated that he will be unavailable on July 13, 2009 because he will in trial in state court. Defense  
 8 counsel anticipates that the trial will last approximately two to three weeks. Defense counsel  
 9 will then be unavailable for a few days after the trial. Therefore, defense counsel needs and has  
 10 requested additional time to investigate and prepare for the motions hearing. Government  
 11 counsel does not object to this continuance. Therefore, for effective preparation and continuity  
 12 of counsel and consideration of defendant's motion by the Court, the parties agree that the  
 13 motions hearing currently scheduled for July 13, 2009 and should be continued to August 17,  
 14 2009 at 9 a.m.

15 2. The attorney for defendant joins in the request to exclude time under the Speedy Trial  
 16 Act, 18 U.S.C. § 3161, for the above reasons, and believes the exclusion of time is necessary for  
 17 effective preparation of the defense; believes the exclusion is in the defendant's best interests;  
 18 and further agrees that the exclusion under the Speedy Trial Act, 18 U.S.C. § 3161, should be for  
 19 the period July 13, 2009 to August 17, 2009.

20 Given these circumstances, the parties believe, and request that the Court find, that the  
 21 ends of justice are served by excluding from calculations the period from July 13, 2009 to  
 22 August 17, 2009 outweigh the best interests of the public and the defendant in a speedy trial  
 23 under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).

24 IT IS SO STIPULATED.

25 DATED: July 8, 2009

/s/ Richard Pointer  
 RICHARD POINTER

27 DATED: July 8, 2009

/s/ Hanley Chew  
 HANLEY CHEW  
 Assistant United States Attorney

**[ ] ORDER**

Having considered the stipulation of the parties, the Court finds that: (1) the defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, July 13, 2009 to August 17, 2009, based upon continuity of defense counsel, the need for the defense counsel to investigate further the facts of the present case, review the discovery that the government has already provided and evaluate further possible defenses and motions available to the defendant; (2) the exclusion of time is necessary for effective preparation of the defense and continuity of counsel and is in the defendant's best interests; and (3) the ends of justice are served by excluding from Speedy Trial calculations the period July 13, 2009 to August 17, 2009.

Accordingly, the Court further orders that (1) the motions hearing set for July 13, 2009 is vacated and that the next appearance date before this Court is scheduled for August 17, 2009 at 9:00 a.m.; and (2) the time Argument for all of these motions are currently scheduled to be heard on August 17, 2009 is excluded from time calculations under the Speedy Trial Act, 18 U.S.C. § 3161.

IT IS SO ORDERED.

DATED: 7/16/09

  
THE HONORABLE RONALD M. WHYTE  
United States District Court Judge

**\*FINAL CONTINUANCE\***